he was not paying any rent in respect of the old premises. He said the owner had agreed not to collect rent. He also said this:

"Before plaintiff started repairs she agreed to let me occupy the premises after completion. In June 1953 the rent was increased to $85.00."

The inference reasonably to be drawn is that the appellant had not been forced out of the old premises. Since the fact as found by the trial President was that the old premises had been completely demolished and a new building erected the learned appeal judge had rightly inferred that the appellant has surrendered the tenancy or voluntarily gave the owner vacant possession of the old premises in order that she could build the new premises. In June, 1953 when he occupied the new building at an increased rent of $85 he was on a new tenancy. One of the reasons for this view is that section 2 of the Control of Rent Ordinance, 1956 excluded new buildings completed after 31st January, 1948 from the definition of "premises" and therefore from the operation of the Ordinance particularly section 12 which restricts order of possession to certain specified cases. Another reason is that on the inference drawn by the appeal judge from the facts which I think is reasonable the principle as applied in *Phillips* v. *Barnett*[3] must also be applied here. In that case three dwelling houses subject to the restrictions imposed by the Rent (Restrictions) Act, 1915 were demolished by the owner after obtaining vacant possession. On the site he built a factory which was let at a rent higher than the standard rent for the demolished houses. The claim by the tenants of the factory to recover rents in excess of the standard rent failed. The Court of Appeal held that the factory which was a new building was not subject to the restrictions imposed by the 1915 Act. Counsel's argument that the restrictions inhere in the site of the demolished houses was rejected as a mistaken view. Grounds 7 and 8, therefore, fail.

The case of *Tioh Kooi Lan* v. *Ismailjee*[4] has been referred to in arguments. All that I need say about *Ismailjee's* case is that it did not establish any general principle which can be applied here. It merely decided that on the facts of that case the test applied by the trial court for the purpose of section 4(2) of the Control of Rent Act, 1966 did not arise for consideration.

With respect I conclude by saying that I agree with the learned Lord President that this appeal be dismissed with costs.

Appeal dismissed.

Solicitors: *Mohamed Yaacob, Ibrahim & Gomez; Wrigglesworth & Co.*

PUBLIC PROSECUTOR v. LOH AH HOO

[A.Cr.J. (Syed Othman J.) August 21, 1974]
[Johore Bahru — Criminal Appeal No. 3 of 1973]

Criminal Law and Procedure — Offence under Customs Act, 1967 — Jurisdiction — Acts done outside jurisdiction continuing within jurisdiction — Whether triable in Malaysia — Customs Act, 1967, s. 135(1)(g).

In this case the respondent had been charged with some others for having been knowingly concerned in an attempt at fraudulent evasion of custom duty on 15 cases of playing cards, an offence under section 135(1)(g) of the Customs Act, 1967. The facts showed that the respondent ordered the goods from Naafi, Singapore; he was responsible for the preparation of the customs declaration although it was signed by the Naafi Chief Clerk; he was present at the loading of the goods in Singapore; and he was present when the Customs carried out investigation and could not give an explanation as to why the goods were not the same as in the declaration. The Sessions Court acquitted the respondent as it found that the acts of the respondent were not committed within the jurisdiction. The Public Prosecutor appealed.

Held: (1) if a person's criminal act or responsibility for the criminal act runs from outside jurisdiction to within jurisdiction then he is liable to be tried in Malaysia;

(2) in this case the respondent was responsible for the preparatory acts done in Singapore and those acts culminated within the jurisdiction, when the goods and the declaration for which the respondent was responsible reached the customs at Johore Bahru; therefore he was responsible;

(3) the order of acquittal should therefore be set aside and the respondent called to enter on his defence.

Cases referred to:-

(1) *Lee Szu Yin* v. *Public Prosecutor* [1962] M.L.J. 49.

(2) *Public Prosecutor* v. *Yong Nam Seng* [1964] M.L.J. 85.

(3) *R.* v. *Oliphant* [1905] 2 K.B. 67.

(4) *R.* v. *de Marny* [1907] 1 K.B. 388.

CRIMINAL APPEAL.

Ahmad Fadzil (Deputy Public Prosecutor) for the appellant.

A. L. Looi for the respondent.

Syed Othman J.: Four persons were charged in the Sessions Court at Johore Bahru with an offence under section 135(1)(g) of the Customs Act, 1967 of having been knowingly concerned in an attempt at fraudulent evasion of customs duty on 15 cases of playing cards. They were (1) the chief clerk of NAAFI in Singapore, (2) the driver of the lorry which transported the goods, (3) the lorry attendant, and (4) the respondent, who was the purchasing agent in Singapore for NAAFI, Kuala Lumpur. At the close of the case for the prosecution, (2) and (3) were acquitted. (1) the chief clerk and (4) the respondent were called to enter on their defence. But upon further submission by counsel for the respondent, the learned president decided that the acts committed by the respondent did not constitute an offence within the jurisdiction of the court and acquitted him. After hearing the chief clerk, he found him guilty and bound him over to be of good behaviour under section 173A Criminal Procedure Code for one year

The appeal is against the acquittal of the respondent.

The case for the prosecution briefly was as follows. On the morning of 5th February, 1972 the respondent

in Singapore brought 15 cases purported to be from a trading company in Singapore to the ware house manager of NAAFI, Far East in Singapore (PW7) and told him that the cases contained rice spoons and were urgently required by NAAFI, Kuala Lumpur. PW7 told him that as the day was a Saturday it was not possible to prepare the necessary declaration form. The respondent told him not to worry. The respondent caused the form to be prepared before the closing time, gave it to PW7 at 11.30 a.m. and told him (PW7) that he would arrange the necessary transport on Monday morning. PW7 accepted the goods. According to the chargeman, NAAFI warehouse at Singapore (PW8), on the morning of 7th February, 1972 the respondent instructed him to load the goods; normally this was PW7's duty. PW7 and PW8 also said that it was not normal for the respondent, being a buyer for NAAFI, to be present at the loading. PW7 did not check the goods. The form which respondent gave PW7 was a declaration of dutiable goods imported to Johore Bahru, similar to other forms in the consignment. The name and address of importer or authorized agent was given as "NAAFI reg. No. 8356N Kuala Lumpur". It was signed by the chief clerk of Singapore NAAFI who was subsequently found guilty. The goods reached Johore Bahru customs in the afternoon. The customs examined the 15 cases covered by the declaration and found that they contained not rice spoons but playing cards. The customs carried out investigation. The respondent came to Johore Bahru. He could not explain how the goods came to be not as what was stated in the declaration. He was arrested with the others.

The question to be determined is whether on the evidence as adduced by the prosecution, the Sessions Court was right in finding that the acts of the respondent were not committed within the jurisdiction and therefore not triable by the court.

The submission of counsel for the respondent here, as before the Sessions Court, is that all the acts of the respondent were done in Singapore and he was not the importer as he did not sign the declaration form. He relies on *Lee Szu Yin* v. *Public Prosecutor*,[1] where it was held that the Magistrate's Court at Johore Bahru had no jurisdiction to try the appellant because the acts took place in Singapore. In this case, the appellant, resident in Singapore, was manager of a company dealing in cotton goods. The company sold some goods to four firms trading in Singapore and invoiced the value of goods at $847. On this valuation, a person in Woodlands, Singapore, prepared a customs declaration, and the goods were transported to Johore Bahru. The customs at Johore Bahru thought there was an undervaluation and carried out investigation and came to their assessment which was slightly above the value invoiced.

In *Public Prosecutor* v. *Yong Nam Seng & Anor.*,[2] relied upon by the appellant, the two respondents were charged with the offence of making an incorrect declaration or alternatively with the offence of failure to make a declaration of dutiable goods. Azmi J. (as he then was) held that the first respondent as importer who signed the declaration was responsible for the incorrect declaration of the goods, which were found at Johore Bahru to be in excess of the quantity shown in the declaration, as from the evidence the declaration signed by the first respondent had been prepared by an employee of the first respondent. The second respondent was held not liable because he merely supplied the materials according to the particulars given which appeared to correspond to the quantity actually packed and handed over to the transport company for transportation to Malacca through Johore Bahru.

The question is which principle applies to the present case.

In *Lee Szu Yin* v. *Public Prosecutor, supra,* Ong J. (as he then was) after discussing two English authorities *R.* v. *Oliphant*[3] and *R.* v. *de Marny*[4] said at page 50: —

> "... The distinction to be drawn between those cases and the instant one is that in the former the portion of the act which was done abroad formed one continuous act with its culmination in the criminal act commited within the jurisdiction, whereas here the making of the undervaluation and declaration were entirely independent acts done by a third party of his own volition. It is to be observed that the charge against the appellant was not for abetment, under section 135 of an offence by Phang Chang Pew. He was charged as a principal".

Considering the authorities, it seems to me that a simple test to apply is this. If a person's criminal act or responsibility for the criminal act runs from outside jurisdiction to within jurisdiction then he is liable.

In the present case the prosecution's evidence shows that no one from NAAFI, Kuala Lumpur, had ordered rice spoons from NAAFI, Singapore; the respondent took it upon himself that an order had been made for what appears to be an unknown person; the indications are that the goods were his; he brought the goods for transportation to Johore; although he did not sign the declaration nevertheless he was responsible for its preparation, as when he brought it to PW7, it had already been signed by NAAFI chief clerk who, I would find, was a mere instrument acting at the instance of the respondent; then the respondent was present at the loading of the goods in Singapore on the very morning that they were to be transported to Johore Bahru; when the customs at Johore Bahru carried out investigation, he was present and could give no explanation as to why the goods were not the same as stated in the declaration. *Lee Szu Yin* v. *Public Prosecutor, supra,* must be distinguished from the present case. In that case, the accused person merely valued the goods in Singapore but he was not responsible for the preparation of the declaration for customs purposes in Johore. In the present case the respondent was responsible for the preparatory acts done in Singapore. The learned president came in effect to this finding. And on the evidence I would also find that the acts culminated within jurisdiction, when the goods and the declaration for which he was responsible reached the customs at Johore Bahru. He was therefore responsible in the sense stated by Azmi J. (as he then was) in *Public Prosecutor* v. *Yong Seng & Anor., supra.* I set aside the order of acquittal and direct that the respondent be called to enter on his defence.

Order accordingly.

Solicitors: *A. L. Looi & Co.*